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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1011

THAD BENSON CARTER,

Petitioner,

vs.

GEORGE A. KUBLER,

Respondent.

PETITION AND BRIEF.

FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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UNITED STATES LAW PRINTING COMPANY, CHICAGO

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OCTOBER TERM, 1944.

NO.

THAD BENSON CARTER,

Petitioner,

vs.

GEORGE A. KUBLER,

Respondent.

PETITION.

For a Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

The brief in support of this petition begins at page 11.

All emphasis in this petition and brief is supplied except where it is stated otherwise.

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

A Summary Statement of the Matter Involved.

The petitioner is a farmer debtor who had two farms and invoked Section 75 of the Bankruptcy Act, 11 U. S. C. 203, to save them. This petition for review concerns his remaining farm of 168 acres which he desires to redeem pursuant to Section 75 (s) (3).

He has already lost one farm of 112 acres through an order of the court below, by the same judge of the District Court, before the Bartels decision of this court in 308 U. S. 180, held that a bankruptcy court may not disclaim a farm or dismiss a farmer debtor proceeding as to any property (R. 3, entry of October 9, 1936). He was unable to maintain an appeal and it was dismissed. (R. 4, entry of April 14, 1937).

An attempt to sell this 168 acre farm was prevented by the directly applicable decision of this Court in *Wright* v. *Union Central,* 311 U. S. 273, which held that a farmer debtor has a right to redeem his farm at its value, prior to a public sale. The change in the district court's order is reflected in the order of March 21, 1941, at R. 7, which found on petition for review that "the decision of the Supreme Court in the case of *Wright* v. *Union Central Life Insurance Company* should be followed."

It was ordered that the conciliation commissioner:

> "have a re-appraisement of the farm made and that the secured creditor be afforded an opportunity to present evidence as to the present fair valuation of such farm and that the Conciliation Commissioner de-

termine the correct appraised value" . . . (Order of March 21, 1941; R. 7).

The conciliation commissioner conducted a hearing and in addition to the evidence submitted reported that he had made a "personal investigation" R. 8, next to last paragraph. The evidence at that hearing included the former $5,800 valuation by the same court of the same farm in the same proceeding (R. 27, top of page). He found the valuation to be $25,200. R. 8, next to last paragraph; (168 acres at $150, $25,200).

Upon a petition for review the judge of the district court erroneously found that the $5,800 valuation was "**made for taxation purposes,**" that is, that the $5,800 valuation was by the state for tax assessment and was foreign to any valuation in the farmer debtor proceeding under Section 75 (s) R. 29, end of first paragraph; R. 29 at p. 31. He modified somewhat the valuation of the conciliation commissioner, reducing it to $20,000.

On appeal the district court was sustained, without opinion.

This Court granted certiorari and found that the $5,800 valuation was an appraisal, approved by the conciliation commissioner, in the same farmer debtor proceeding, contrary to the finding of the district court that it was for "taxation purposes" (*Carter* v. *Kubler*, 1943, 320 U. S. 243, second paragraph of the opinion). This Court further found that the procedure by the conciliation commissioner was improper.

The First Order Involved Here.

When the case came back to the district court below the appellant tendered to the clerk of that court his "Petition for Rehearing" which the clerk refused to file. R. 40. The Judge of the district court in Chambers denied the petitioner's request to file it. (R. 49, last paragraph of first Journal Entry).

In that "Petition for Rehearing" the appellant stated that he desired to redeem his 168 acre farm under the statutory provision that he may redeem it at its "present fair and reasonable market value." R. 40 to 48.

He showed that the district court itself had found the farm was worth $5,800 but that contrary to the evidence (by making a "personal investigation") the conciliation commissioner had increased it to $25,000, which the judge reduced to $20,000 after throwing out of the case the former $5,800 valuation, (by the remark that the $5,800 "was for taxation purposes." R. 29 end of first paragraph).

He showed that the $20,000 valuation was "not in accordance with the evidence submitted," because the $5,800 valuation by the same court was entirely disregarded. And further, because the evidence on which the $25,000 and $20,000 valuations were based did not support either of them, and they were fantastic, having no relation to the evidence. He submitted new evidence by way of affidavits which showed by events occurring subsequent to the valuation hearing that both the figures of $25,000 and $20,000 were unsupportable (R. 40 to 48). The complete evidence on which the conciliation commissioner based his $25,000

valuation and the judge reduced it to $20,000 is at R. 9 to 28.

By his order, the first one appealed from, the judge of the district court denied the right to file the petition for rehearing. R. 49, first order.

The Second Order Involved Here.

By the second order appealed from the farmer debtor was given until January 29, 1944, to redeem at the $20,000 or the farm was to be sold at public sale. R. 49 to 50, second order.

An appeal followed, (R. 50), in which the district court was sustained without opinion as to both orders R. 57.

II.

Statement of the Statutory Basis of the Jurisdiction of This Court.

The jurisdiction of this court is conferred by Section 240 (a) of the Judicial Code; 28 U. S. C. 347 (a).

The petitioner has complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The final judgment of the court below (R. 57) became final on December 4, 1944, when a petition for rehearing was denied (R. 58). This petition is filed within three months thereafter.

III.

The Questions Submitted.

1.

Could the appellant be denied the right to file his petition for rehearing, which was presented to the clerk on December 20, 1943? R. 40 to 48.

2.

Could the lower court order the appellant farmer debtor to redeem his farm at a valuation of $20,000 under penalty of having it sold, which $20,000 sum was based upon an erroneous finding that a previous valuation of $5,800 pertained to a different proceeding and therefore was not pertinent, whereas this Court found that said $5,800 was the valuation previously fixed for the same farm, in the same farmer debtor proceeding by the same court? R. 40, first three paragraphs; *Carter* v. *Kubler*, 1943, 320 U. S. 243, second paragraph at page 244.

IV.

Reasons Relied Upon for Allowance of a Writ of Certiorari.

1.

The petitioner was denied due process of law when the Clerk refused, and the Court of appeals sustained the Clerk in refusing to file his petition for rehearing.

2.

The petitioner was denied due process of law when the judge of the district court denied, and the Court of appeals sustained the district court in denying, his request to file his petition for rehearing.

3.

The district court violated Section 9 of the Judicial Code: 28 U. S. C. 13, which provides that the district courts shall be deemed always open, as courts of equity, for the purpose of filing any pleading, and making motions, and the Court of appeals erred in sustaining such violation by the district Court.

4.

The district court violated Rule 77 (a) of the Rules of Civil Procedure for the District Courts of the United States, which provides that district courts shall be deemed aways open for the purpose of filing any pleading or other paper and the court of appeals erred in sustaining the district court in such violation.

5.

The Court of appeals sanctioned the departure by the district court from the accepted and usual course of judicial proceedings in denying to the petitioner his right to file his motion in the office of the Clerk of the district court.

6.

The decision of the court of appeals is contrary to the generally recognized course of conduct of judicial offices.

7.

The Court of appeals by "concluding that at some point there must be an end to litigation and a recognition of final adjudication" (R. 57), violated the fundamental right of a litigant to have his claim of right judicially determined. Said appellate court refused to consider in any way the claim of the petitioner.

8.

The finding of this Court in *Carter* v. *Kubler*, 320 U. S. 243, second paragraph at page 244, that $5,800 was the original valuation of the farm in same proceeding, which finding overruled the finding of the district court that it was for a different purpose ("taxation,") and the finding of the district judge that there had been but a little change in value since that original valuation, have been disregarded by both the district court and the court of appeals. The result is that the order requiring the petitioner to redeem his farm, or in lieu thereof to have his farm sold, is a direct violation of the statutory duty of the court to fix a value for redemption in accordance with the evidence submitted. Order R. 49, bottom of page. Section 75(s) (3).

9.

The order of the district court requiring the petitioner to redeem his farm is in violation of Section 75 (s) (3) requiring the court first to fix a value of redemption in accordance with the evidence submitted.

10.

In expressly adhering to its former holding in *Carter* v. *Kubler*, 131 Fed. (2d) 222, that the bankruptcy court had a "judicial discretion" to fix the sum at which a farmer

debtor shall redeem his farm under Section 75 (s) (3), the order of the appellate court below is in conflict with the decision of the Eighth Circuit Court of Appeals in *Peterson* v. *John Hancock*, 116 Fed. (2d) 148, in holding that "The statute, as construed by the Supreme Court in *Bartels* case is explicit and mandatory, and the District Court had no discretion to act contrary to its terms," and holding that "judicial decision and not judicial discretion" is what is called for.

11.

The decision of the appellate court in sustaining the order of the district court requiring redemption, or in lieu thereof, requiring sale of the petitioner's farm, without any valuation being fixed by the court in accordance with the evidence submitted, is in conflict with the decision of this court in *John Hancock* v. *Bartels*, 308 U. S. 180; *Gray* v. *Union Joint Stock Land Bank*, 308 U. S. 523; *Morrison* v. *Federal Land Bank*, 308 U. S. 524; *Borchard* v. *California*, 310 U. S. 311; *Wright* v. *Logan*, 315 U. S. 139; and *Wragg* v. *Federal Land Bank*, 317 U. S. 325, holding that Section 75 of the Bankruptcy Act provides an orderly procedure which this court called a "Mandate of the Statute." The provision of Section 75 (s) (3) that redemption shall be made at a valuation fixed in "accordance with the evidence submitted" has been utterly disregarded by the district court, which the appellate court has sustained.

12.

The decision of the appellate court in sustaining the district court in its order for redemption, or in lieu thereof, ordering a sale of the petitioner's farm without first fixing the valuation for redemption in accordance with Section

75 (s) (3), is in conflict with the decision of this court in *Wright* v. *Union Central*, 311 U. S. 273, that the statute must be "liberally construed to give the debtor the full measure of the relief afforded by Congress, lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." The decision and order below disregard the express provision of Section 75 (s) (3) that the valuation for redemption must be fixed "in accordance with the evidence submitted."

Wherefore your petitioner prays that a writ of certiorari issue to the Sixth Circuit Court of Appeals directing it to certify and send to this court a transcript of the record and proceedings thereon to the end that this cause may be determined by this court and for all other relief as may be proper.

Respectfully submitted,

ELMER MCCLAIN, Lima, Ohio,
Counsel for Petitioner.

Lima, Ohio.
February 24, 1945.